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2026 INSC 1238

Non-Reportable

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

Civil Appeal No. 14303 of 2026
(@Special Leave Petition (C) No.15175 of 2025)

M/s Marino Dredgeco Limited

...Appellant

Versus

The Board of Trustees of the Port of Kolkata

...Respondent

With

Civil Appeal No.14304 of 2026
(@Special Leave Petition (C) No.40370 of 2026
@Diary No.50150 of 2025)

J U D G M E N T

K. VINOD CHANDRAN, J.

Leave granted.

2. The two appeals are at the instance of the awarder and the contractor against the judgment under Section 37 of the Arbitration and Conciliation Act, 1996 (for short, 'the Act'); which appeal was filed by the awarder. The impugned judgment overturned the judgment under Section 34 of the Act which affirmed the arbitration award and modified the

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award quantifying the amounts payable by the awarder to 50% of that quantified by the Arbitrator and reduced the interest to 6% on the principal sum from 08.02.2002. The modification was made on the ground that the amounts claimed for additional works carried out was more than 70% of the amounts as per the original contract, which according to the Division Bench of the High Court of Calcutta shocked the conscience of the Court. This was despite the Division Bench having recorded that the award passed by the Arbitrator cannot be described as one based on 'no evidence' or 'insufficient evidence' nor can it be termed as perverse or patently illegal or against the fundamental policy of Indian law. According to the Division Bench, the shock rendered to its conscience makes it fall within the ambit of conflict with the basic notions of morality or justice.

3. Mr.R.Anand Padmanabhan and Mr.Amitava Mukherjee, learned Senior Counsel appeared for the Contractor; one in the appeal filed by the Contractor and the other in the appeal of the Port Trust. The

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learned Senior Counsel argued that the original contract itself was for dredging of the river bed and shores at the Sagar Island to make a channel and basin, which was put in use from 17.04.2001 when it was inaugurated by the Chairman of the awarder, Port Trust of Calcutta. As on 19.07.2000, there was a letter issued by the Port Trust, entrusting additional work which occurred due to 100% siltation, requiring dredging of the area repeatedly, more by reason of the Port Trust having not provided correct data of the soil constitution and having failed to construct protective walls. It was argued that the Court under Section 37 had limited powers of interference as has been held by the Constitution Bench of this Court in ***Gayatri Balasamy v. M/s ISG Novasoft Technologies Limited***[1]***.*** The modification made based on the bills being shockingly high was without looking at the material relied on by the Arbitrator. Thus, causing interference on a subjective presumption that the additional work cannot in its

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value reach a substantial percentage of the value of the original work. It is on a mere surmise that such a decision was arrived at without looking at the nature of the work carried out and the additional work necessitated.

4. Mr. Siddharth Bhatnagar, learned Senior Counsel appearing for the respondent awarder Port Trust, in tune with its decision to file an appeal against the impugned judgment seeks for setting aside the entire arbitral award. Alternatively, it is prayed that if at all the additional work is found to have been carried out by the contractor, then the impugned judgment has to be sustained at 50% with reduced interest of 6%. ***Gayatri Balasamy***[1] is relied on to point out that, in fact, the entire award ought to have been set aside since the award is against public interest.

5. It is pointed out that no completion certificate was issued and there was no additional work entrusted to the contractor. In fact, the work entrusted was terminated and the appellant failed to procure the certificate of completion, as is provided

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under the General Conditions of Contract (GCC). Reliance is also placed on ***Batliboi Environmental Engineers Ltd. v. Hindustan Petroleum Corporation Ltd. (HPCL)***[2] to argue that the quantification of amounts should not be whimsical and absurd, resulting in a windfall or bounty. We should immediately notice that the cited decision has no application since it dealt with damages and not with respect to invoices validly raised for additional work.

6. We also looked at the judgement of the Single Judge under Section 34 of the Act which application prayed for setting aside of the award dated 03.11.2003. Admittedly, the award was for dredging/evacuation of the approach channel and basin project of shore-based pilot station at Sagar Island. The work was to be completed within 18 months and admittedly there was delay due to the adverse *force majeure* conditions, not attributable to the contractor. The learned Single Judge found that

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admittedly the work was completed by 17.04.2001 when the Chairman of the Port Trust inaugurated the pilot station using the channel dredged by the appellant. That there was additional work required to be done is also evident from the letter dated 19.07.2000, addressed by the Port Trust to the contractor, produced as Annexure A35 along with the application to file additional documents. The learned Single Judge affirmed the award.

7. It was also an admitted position that insofar as the original work is concerned, the total amount payable was Rs.2,86,56,200/- out of which Rs.2,79,32,865/- had been paid. The arbitration was initiated specifically for the additional work carried out which is evident from the letter dated 19.07.2000. The additional work was necessitated due to the *force majeure* weather conditions and due to non-compliance of the soil character with the data supplied by the Port Trust itself. As has been rightly submitted by the contractor, the work itself was dredging of river bed and shores to make a channel

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and basin up to a specified depth with dumping and disposal of dredged materials. The specific contention is that re-dredging was required due to the mismatch of the data supplied with respect to the soil conditions and the failure to construct protective walls to avoid further siltation. The work of re-dredging is identical to that of the original contract, is the contention raised, which by the nature of the work, is found to be perfectly valid. Hence, the modification of the award merely for reason of the Court's conscience having been shocked also for the sole ground of the amount claimed for the additional work having exceeded 70% of the original contract cannot at all be sustained.

8. In fact, the Division Bench dealing with the matter under Section 37 clearly recorded a finding that the completion certificate was not available since it was not issued by the Port Trust. Merely for reason of refusal to issue completion certificate, it cannot be said that the contractor would not be entitled to the amounts in the bill raised for the work carried out,

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was the finding. It was also found that the contractor himself had produced the measurements and the award was based on the pre and post work levels. The Division Bench also found that the documents relied on for the purpose of quantification of the amounts due cannot be termed to be irrelevant for the purpose of such determination, by no stretch of imagination. The reliance placed on the documents produced by the contractor to substantiate the work carried out was found to be quite valid even in the context of the absence of a completion certificate issued under the GCC. The Division Bench also found that the additional work was necessitated because of the *force majeure* conditions and the mismatch of the actual soil character from that disclosed in the data made available by the Port Trust. Having found that the arbitration award was based on adequate evidence and by no stretch of imagination it can be termed as perverse or patently illegal, we find the modification on the ground of 'shocking the conscience' to be not coming within the contours of

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the jurisdiction conferred under Section 37 and it cannot at all the be said to be in conflict with the basic notions of morality or justice.

9. The Division Bench had relied on ***Ssangyong Engineering & Construction Co. Ltd. v. National Highways Authority of India (NHAI)***[3] to cull out the principles for interference of an arbitration award. The cited decision held that there can be no interference with an award on the ground that the Arbitrator has not adopted a judicial approach since then, the interference would be on the merits of the award, which cannot be permitted post the Amendment of 2015. True, the Court also declared that the conflict with the most basic notions of morality or justice brought in after the Amendment, substituting the "interest of India"; which was the provision pre-amendment, can only be applied where the arbitral award shocks the conscience of the Court. However, the words are not to be applied on a mere lip service and there should be a substantive reason

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which blatantly and patently brings forth the conflict with the most basic notions of morality or justice, resulting in the conscience of the Court being shocked.

10. ***Somdatt Builders–NCC–NEC (JV) v. National Highways Authority of India & Ors.***[4] held that the High Court exercising extremely limited jurisdiction under Section 37 of the Act cannot set aside an arbitral award by merely using expressions like 'opposed to the public policy of India'; 'patent illegality' and 'shocking the conscience of the Court' (*sic paragraph 51*). As has already been held the impugned order has merely used the words on the sole ground of the bills for the additional work having exceeded 70% of the original contract; without looking at the nature of the additional work involved.

11. ***Gayatri Balasamy***[1] while putting forth the proposition that awards, definitely can be set aside in part, which power is encompassed in the power to set aside the award in its entirety, made a caveat that

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setting aside an award partially would not be feasible when the 'valid' and 'invalid' portions are legally and practically inseparable. It was emphasised that the 'valid' and 'invalid' portions should not be inter-dependent or intrinsically intertwined.

12. In the present case, there is no question of severance of the award into separate silos since the quantification was made in accordance with valid measurements and the invoices raised by the contractor. The Division Bench considering the application under Section 37 has not looked into the measurement or the invoices, which in any event, would be an exercise of adjudication on merits, clearly prohibited under the Act of 1996. The measurements and invoices raised are of one character, based on the additional work of re-dredging which cannot be compartmentalised as 'valid' and 'invalid'.

13. The impugned judgment also expressed shock by reason merely of the enormity of the quantification for additional works exceeding 70% of the original

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contract for reason of the awarder being a State entity. ***Pam Developments Private Ltd. v. State of West Bengal***[5] required the parties to an arbitration to be treated with equality; without any special treatment being given to the Government entity while even considering the application for grant of stay of a money decree in proceedings under Section 34 of the Arbitration Act. There can hence be no interference caused to the quantum of claim decided by the Arbitrator, based on valid material, merely for the reason that the award debtor is a Government entity and that the quantum appears to be excessive without any substantiation for such a ground being raised against the award itself.

14. At the cost of repetition, we have to observe that the original contract was for dredging to build a channel and the additional work was also for dredging to keep the channel and basin operational. We find the reasoning of the Division Bench under Section 37 to be not in consonance with the grounds provided

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under the Act to set aside an arbitral award, especially, when the Arbitrator had looked into the documents produced by the petitioner on joint measurements carried out of the additional work entrusted with the contractor.

15. The order impugned is set aside and the appeal of the contractor is allowed. The arbitral award stands restored.

16. The appeal of the Port Trust is disposed of since already the order impugned is set aside in the other appeal.

17. Pending application (s), if any, shall stand disposed of.

..... J.
(J. B. PARDIWALA)

..... J.
(K. VINOD CHANDRAN)

NEW DELHI
NOVEMBER 18, 2026.